



U.S. Department of Justice

Antitrust Division

San Francisco Office

*450 Golden Gate Avenue
Box 36046, Room 10-0101
San Francisco, CA 94102-3478*

*415/934-5300
FAX 415/934-5399*

March 25, 2016

The Honorable James Donato
United States District Judge
Courtroom 11, 19th Floor
United States Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Re: IN RE CAPACITORS ANTITRUST LITIGATION, No. 3:14-cv-03264-JD

Dear Judge Donato:

I write on behalf of the United States, an intervenor in this civil action (Dkts. 240, 309), with regard to a discovery dispute about the scheduling of two depositions noticed for early May, Masahiro Asakawa and Hideaki Sato of NEC TOKIN. The government seeks a limited stay of the two depositions until October 1, 2016, with the opportunity to seek an extension of the stay if the situation warrants. The deposition notices of March 17, 2016 accompany this letter as Attachments A and B. The United States objected to these depositions in an email dated March 18 (Attachment C), and met and conferred with counsel for the direct and indirect purchaser plaintiffs and for NEC TOKIN on March 21.

The United States objects to the depositions of Asakawa and Sato because they are prospective criminal trial witnesses with key testimony implicating subjects of a grand jury investigation. In the judgment of the attorneys for the government, civil depositions of Asakawa and Sato at this point would interfere with the criminal investigation and the prospects for timely criminal resolutions. The Court is aware that there is an indictment that has been returned in *U.S. v. Takuro Isawa*, 15-CR-0163-JD, and that there is an ongoing grand jury investigation of other corporate and individual subjects. If the Court wishes, the United States can further describe, *ex parte* and under seal, the information that Asakawa and Sato have and its relevance to possible criminal trials.

To date, the United States has made every effort to be narrow in seeking civil discovery limitations. Documents provided to the grand jury were produced at an early stage of the civil litigation and various depositions already have gone forward without government objection. Plaintiffs have recently identified a large number of individuals they wish to depose in the future, and the United States does not expect to object to many of those depositions. At this time, the

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Asakawa and Sato depositions are the only two for which a discovery dispute is ripe for the Court's resolution.

Postponing these depositions to protect the integrity of the criminal proceedings is well established as within a Court's discretion. "[A] court may decide in its discretion to stay civil proceedings . . . 'when the interests of justice seem[] to require such action.'" *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995) (citing *United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970)). *Keating* articulates six factors for a Court to consider in deciding whether to stay any aspect of civil proceedings:

1. The interests of the plaintiffs in proceeding expeditiously with the litigation or any particular aspect of it, and the potential prejudice to plaintiff of the delay;
2. The burden that any particular aspect of the proceedings may impose on defendants;
3. The convenience of the court in the management of its cases, and the efficient use of judicial resources;
4. The interests of persons not parties to the civil litigation;
5. The interests of the public in the pending criminal and civil litigation; and
6. The extent to which a defendant's Fifth Amendment rights are implicated.

Keating, 45 F.3d at 324-25. Of these six factors, the factor to which the government urges the Court to give the greatest weight is the public interest in criminal enforcement.

If the depositions of Asakawa and Sato go forward, corporate subjects of the grand jury investigation will be able to use liberal civil discovery tools to circumvent criminal discovery rules that are more restrictive. Criminal discovery rules are "purposefully limited so as to prevent perjury and manufactured evidence, to protect potential witness from harassment and intimidation, and to level the playing field between the government and the defendant, who would be shielded from certain discovery by the Fifth Amendment." *Sec. & Exch. Comm'n v. Nicholas*, 569 F. Supp. 2d 1065, 1071-72 (C.D. Cal. 2008) (granting a stay of civil discovery because a related criminal case was "of primary importance to the public, the [d]efendants, and the Court"). Defendants in criminal proceedings generally do not have the right to depose government witnesses. Allowing corporate subjects of an ongoing grand jury investigation to cross-examine potential witnesses who may testify against them in a criminal trial – which is what will happen if the civil depositions go forward – disrupts the purposefully limited nature of criminal discovery.

The government's request for a stay is time-limited. The United States requests a stay of the Asakawa and Sato depositions until October 1, 2016. By then, further developments in the criminal investigation, such as additional corporate and individual pleas, may obviate the need for Asakawa and Sato to testify at a criminal trial. In that case, the United States would withdraw its objection and allow the depositions to proceed. On the other hand, depending on future developments, the United States may seek to extend the stay for an additional period of time.

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In summary, the government requests that the Court postpone the depositions of Asakawa and Sato until October 1, 2016. Should the Court desire further detail about the information Asakawa and Sato have and its relevance to any possible criminal trials, the United States will provide that detail *ex parte* and under seal. If future developments allow the United States to withdraw its objection prior to October 1, 2016, the United States will promptly advise the Court and the parties.

Sincerely,

/s/

Howard J. Parker
Trial Attorney
DOJ Antitrust Division

ATTACHMENT A

Joseph R. Saveri (State Bar No. 130064)
Andrew M. Purdy (State Bar No. 261912)
Matthew S. Weiler (State Bar No. 326052)
James G. Dallal (State Bar No. 277826)
Ryan J. McEwan (State Bar No. 285595)
JOSEPH SAVERI LAW FIRM, INC.
555 Montgomery Street, Suite 1210
San Francisco, California 94111
Telephone: (415) 500-6800
Facsimile: (415) 395-9940
Email: jsaveri@saverilawfirm.com
apurdy@saverilawfirm.com
mweiler@saverilawfirm.com
jdallal@saverilawfirm.com
rmcewan@saverilawfirm.com

Interim Lead Class Counsel for Direct Purchaser Plaintiffs

Joseph W. Cotchett (State Bar No. 36324)
Steven N. Williams (State Bar No. 175489)
Adam J. Zapala (State Bar No. 245748)
Elizabeth Tran (State Bar No. 280502)
COTCHETT PITRE & McCARTHY LLP
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
Email: jcotchett@cpmlegal.com
swilliams@cpmlegal.com
azapala@cpmlegal.com
etran@cpmlegal.com

Interim Lead Class Counsel for Indirect Purchaser Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST LITIGATION
THIS DOCUMENT RELATES TO ALL ACTIONS

Master File No. 3:14-cv-03264-JD

**PLAINTIFFS' NOTICE OF
DEPOSITION OF MASAHIRO
ASAKAWA**

1 TO ALL COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that Direct Purchaser Plaintiffs will take the deposition of Masahiro
3 Asakawa at 9:30 a.m. on Thursday, May 5, 2016 and Friday, May 6, 2016 at the San Francisco offices of
4 Gibson Dunn & Crutcher LLP, located at 555 Mission Street, Suite 3000, San Francisco, California
5 94105. The deposition will be recorded by stenographic and videographic means before a notary public
6 or other officer authorized to administer oaths and take testimony.

7 Dated: March 17, 2016

JOSEPH SAVERI LAW FIRM, INC.

8 By: /s/ Joseph R. Saveri
9 Joseph R. Saveri

10 Joseph R. Saveri (State Bar No. 130064)
11 Andrew M. Purdy (State Bar No. 261912)
12 Matthew S. Weiler (State Bar No. 236052)
13 James G. Dallal (State Bar No. 277826)
14 Ryan J. McEwan (State Bar No. 285595)
15 JOSEPH SAVERI LAW FIRM, INC.
16 555 Montgomery Street, Suite 1210
17 San Francisco, California 94111
18 Telephone: (415) 500-6800
19 Facsimile: (415) 395-9940

Interim Lead Class Counsel for Direct Purchaser Plaintiffs

16 Dated: March 17, 2016

COTCHETT PITRE & MCCARTHY LLP

17 By: /s/ Steven N. Williams
18 Steven N. Williams

19 Joseph W. Cotchett (State Bar No. 36324)
20 Steven N. Williams (State Bar No. 175489)
21 Adam J. Zapala (State Bar No. 245748)
22 Elizabeth Tran (State Bar No. 280502)
23 COTCHETT PITRE & MCCARTHY LLP
24 840 Malcolm Road
25 Burlingame, CA 94010
26 Telephone: (650) 697-6000
27 Facsimile: (650) 697-0577

Interim Lead Class Counsel for Indirect Purchaser Plaintiffs

ATTACHMENT B

Joseph R. Saveri (State Bar No. 130064)
Andrew M. Purdy (State Bar No. 261912)
Matthew S. Weiler (State Bar No. 326052)
James G. Dallal (State Bar No. 277826)
Ryan J. McEwan (State Bar No. 285595)
JOSEPH SAVERI LAW FIRM, INC.
555 Montgomery Street, Suite 1210
San Francisco, California 94111
Telephone: (415) 500-6800
Facsimile: (415) 395-9940
Email: jsaveri@saverilawfirm.com
apurdy@saverilawfirm.com
mweiler@saverilawfirm.com
jdallal@saverilawfirm.com
rmcewan@saverilawfirm.com

Interim Lead Class Counsel for Direct Purchaser Plaintiffs

Joseph W. Cotchett (State Bar No. 36324)
Steven N. Williams (State Bar No. 175489)
Adam J. Zapala (State Bar No. 245748)
Elizabeth Tran (State Bar No. 280502)
COTCHETT PITRE & McCARTHY LLP
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
Email: jcotchett@cpmlegal.com
swilliams@cpmlegal.com
azapala@cpmlegal.com
etran@cpmlegal.com

Interim Lead Class Counsel for Indirect Purchaser Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST LITIGATION
THIS DOCUMENT RELATES TO ALL ACTIONS

Master File No. 3:14-cv-03264-JD

**PLAINTIFFS' NOTICE OF
DEPOSITION OF HIDEAKI SATO**

1 TO ALL COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that Direct Purchaser Plaintiffs will take the deposition of Hideaki
3 Sato at 9:30 a.m. on Thursday, May 12, 2016 and Friday, May 13, 2016 at the San Francisco offices of
4 Gibson Dunn & Crutcher LLP, located at 555 Mission Street, Suite 3000, San Francisco, California
5 94105. The deposition will be recorded by stenographic and videographic means before a notary public
6 or other officer authorized to administer oaths and take testimony.

7 Dated: March 17, 2016

JOSEPH SAVERI LAW FIRM, INC.

8 By: /s/ Joseph R. Saveri
9 Joseph R. Saveri

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11 Andrew M. Purdy (State Bar No. 261912)
12 Matthew S. Weiler (State Bar No. 236052)
13 James G. Dallal (State Bar No. 277826)
14 Ryan J. McEwan (State Bar No. 285595)
15 JOSEPH SAVERI LAW FIRM, INC.
16 555 Montgomery Street, Suite 1210
17 San Francisco, California 94111
18 Telephone: (415) 500-6800
19 Facsimile: (415) 395-9940

Interim Lead Class Counsel for Direct Purchaser Plaintiffs

16 Dated: March 17, 2016

COTCHETT PITRE & MCCARTHY LLP

17 By: /s/ Steven N. Williams
18 Steven N. Williams

19 Joseph W. Cotchett (State Bar No. 36324)
20 Steven N. Williams (State Bar No. 175489)
21 Adam J. Zapala (State Bar No. 245748)
22 Elizabeth Tran (State Bar No. 280502)
23 COTCHETT PITRE & MCCARTHY LLP
24 840 Malcolm Road
25 Burlingame, CA 94010
26 Telephone: (650) 697-6000
27 Facsimile: (650) 697-0577

*Interim Lead Class Counsel for Indirect Purchaser
28 Plaintiffs*

ATTACHMENT C

From: Parker, Howard

Sent: Friday, March 18, 2016 2:47 PM

To: 'James Dallal'; enadel@mintz.com; bdsokler@mintz.com; stacy.frazier@wilmerhale.com; chris.megaw@wilmerhale.com; thomas.mueller@wilmerhale.com; erik.shallman@wilmerhale.com; heather.tewksbury@wilmerhale.com; pfriedman@mofo.com; jjaeckel@mofo.com; mkniffen@mofo.com; jbank@wsgr.com; jcohen@wsgr.com; jjacobson@wsgr.com; cpak@wsgr.com; jvanhooreweghe@wsgr.com; epenson@jonesday.com; jlevee@jonesday.com; rzernik@jonesday.com; jhale.ali@pillsburylaw.com; roxane.polidora@pillsburylaw.com; jake.sorensen@pillsburylaw.com; bonnie.lau@dentons.com; felix.woo@dentons.com; ELazarus@gibsondunn.com; tnicoud@gibsondunn.com; MParrott@gibsondunn.com; ASchwing@gibsondunn.com; steven.kowal@klgates.com; Michael.martinez@klgates.com; scott.mendel@klgates.com; lauren.norris@klgates.com; lauren.salins@klgates.com; Joseph.Bial@cwt.com; Daniel.Howley@cwt.com; skaufhold@kaufholdgaskin.com; Rick.Rule@cwt.com; eric.sega@cwt.com; dean.shaffer@cwt.com; adam.fox@squirepb.com; helen.yang@squirepb.com; ashley.bauer@lw.com; belinda.lee@lw.com; megan.hausler@bakermckenzie.com; Colin.Murray@bakermckenzie.com; darrell.prescott@bakermckenzie.com; catherine.stillman@bakermckenzie.com; mmdonovan@winston.com; sfarber@winston.com; mgeagan@winston.com; dgreenspan@winston.com; jkessler@winston.com; IPapendick@winston.com; mrichardson@winston.com; jtschirgi@winston.com; pvictor@winston.com; Jensen, Mallory (mjensen@omm.com); korourke@omm.com; mtubach@omm.com; mbrettburns@hunton.com; dhigbee@hunton.com; lkostyshak@hunton.com; dpetkoski@hunton.com; Caplen, Robert A. <RCaplen@hunton.com> (RCaplen@hunton.com); andrew.azarmi@dentons.com; gap.bono@dentons.com; steve.chippendale@dentons.com; claire.maddox@dentons.com; morgan.feder@hugheshubbard.com; sigrid.jernudd@hugheshubbard.com; ethan.litwin@hugheshubbard.com; david.stern@hugheshubbard.com; allisondavis@dwt.com; sanjaynangia@dwt.com; nickverwolf@dwt.com; jarod.bona@bonalawpc.com; aaron.gott@bonalawpc.com; Lem, Jacklin
Cc: 'Howard Sedran'; Austin Cohen (ACohen@lfsblaw.com); Sol Cera; 'C. Andrew Dirksen (cdirksen@cerallp.com)'; kpierson@cohenmilstein.com; 'Johnson, Brent'; Alexander, Laura; dcg@GirardGibbs.com; chc@GirardGibbs.com; 'Asciolla, Gregory S. (GAsciolla@labaton.com)' (GAsciolla@labaton.com); Perez, Matthew; ecramer@bm.net; Ruthanne Gordon; Paul Costa; Roberta Liebenberg; Joseph Saveri; Andrew M. Purdy; Matthew Weiler; Tompkins Charles E; Ripp, Paul J.; Lifvendahl, Eric R.; ajo@willmont.com; lesley@blockesq.com; jcotchett@cpmlegal.com; swilliams@cpmlegal.com; azapala@cpmlegal.com; Elizabeth Tran; jchang@cpmlegal.com

Subject: In re Capacitors Antitrust Litigation -- Deposition Notices for Asakawa-san and Sato-san

Dear Joe, Adam, and Charles,

As I advised you by phone last week before you yesterday noticed the depositions of NEC-Tokin's Asakawa-san and Sato-san, the United States objects to these two depositions going forward at this point and requests that they be deferred. The reason for deferral is to protect the public interest in fair and effective criminal prosecution of the conduct that is the subject both of your civil lawsuit and of a criminal investigation by our office. In accordance with Judge Donato's standing order on discovery disputes, when and where can you promptly meet and confer in person with the DOJ and NEC-Tokin counsel to see if this dispute can be resolved without the necessity of our seeking relief directly from the Court?

If any other counsel feel that they are parties to this dispute and should be included in a meet and confer under Judge Donato's procedures, please let me know right away.

Howard Parker, DOJ trial attorney, 415/934-5342

From: James Dallal [mailto:jdallal@saverilawfirm.com]

Sent: Thursday, March 17, 2016 3:28 PM

To: enadel@mintz.com; bdsokler@mintz.com; stacy.frazier@wilmerhale.com; chris.megaw@wilmerhale.com;

thomas.mueller@wilmerhale.com; erik.shallman@wilmerhale.com; heather.tewksbury@wilmerhale.com; pfriedman@mofo.com; jjaeckel@mofo.com; mkniffen@mofo.com; jbank@wsgr.com; jcohen@wsgr.com; jjacobson@wsgr.com; cpak@wsgr.com; jvanhooreweghe@wsgr.com; epenson@jonesday.com; jlevee@jonesday.com; rzernik@jonesday.com; jhale.ali@pillsburylaw.com; roxane.polidora@pillsburylaw.com; jake.sorensen@pillsburylaw.com; bonnie.lau@dentons.com; felix.woo@dentons.com; ELazarus@gibsondunn.com; tnicoud@gibsondunn.com; MParrott@gibsondunn.com; ASchwing@gibsondunn.com; steven.kowal@klgates.com; Michael.martinez@klgates.com; scott.mendel@klgates.com; lauren.norris@klgates.com; lauren.salins@klgates.com; Joseph.Bial@cwt.com; Daniel.Howley@cwt.com; skaufhold@kaufholdgaskin.com; Rick.Rule@cwt.com; eric.sega@cwt.com; dean.shaffer@cwt.com; adam.fox@squirepb.com; helen.yang@squirepb.com; ashley.bauer@lw.com; belinda.lee@lw.com; megan.hausler@bakermckenzie.com; Colin.Murray@bakermckenzie.com; darrell.prescott@bakermckenzie.com; catherine.stillman@bakermckenzie.com; mmdonovan@winston.com; sfarber@winston.com; mgeagan@winston.com; dgreenspan@winston.com; jkessler@winston.com; IPapendick@winston.com; mrichardson@winston.com; jtschirgi@winston.com; pvictor@winston.com; Jensen, Mallory (mjensen@omm.com); korourke@omm.com; mtubach@omm.com; mbrettburns@hunton.com; dhigbee@hunton.com; lkostyshak@hunton.com; dpetkoski@hunton.com; Caplen, Robert A. <RCaplen@hunton.com> (RCaplen@hunton.com); andrew.azarmi@dentons.com; gap.bono@dentons.com; steve.chippendale@dentons.com; claire.maddox@dentons.com; morgan.feder@hugheshubbard.com; sigrid.jernudd@hugheshubbard.com; ethan.litwin@hugheshubbard.com; david.stern@hugheshubbard.com; allisondavis@dwt.com; sanjaynangia@dwt.com; nickverwolf@dwt.com; jarod.bona@bonalawpc.com; aaron.gott@bonalawpc.com; Parker, Howard; Lem, Jacklin
Cc: 'Howard Sedran'; Austin Cohen (ACohen@lfsblaw.com); Sol Cera; 'C. Andrew Dirksen (cdirksen@cerallp.com)'; kpierson@cohenmilstein.com; 'Johnson, Brent'; Alexander, Laura; dcg@GirardGibbs.com; chc@GirardGibbs.com; 'Asciolla, Gregory S. (GAsciolla@labaton.com)' (GAsciolla@labaton.com); Perez, Matthew; ecramer@bm.net; Ruthanne Gordon; Paul Costa; Roberta Liebenberg; Joseph Saveri; Andrew M. Purdy; Matthew Weiler; Tompkins Charles E; Ripp, Paul J.; Lifvendahl, Eric R.; ajo@willmont.com; lesley@blockesq.com; jcotchett@cpmlegal.com; swilliams@cpmlegal.com; azapala@cpmlegal.com; Elizabeth Tran; jchang@cpmlegal.com

Subject: In re Capacitors Antitrust Litigation

Good afternoon,

Please see attached Notices of Deposition for the Depositions of:

- 1) Masahiro Asakawa (NEC TOKIN), set for May 5-6 at the San Francisco offices of Gibson Dunn; and
- 2) Hideaki Sato (NEC TOKIN), set for May 12-13 at the same location.

Thank you.

Best regards,

James Dallal
t 415.500.6800 x803
f 415.395.9940
jdallal@saverilawfirm.com

JOSEPH SAVERI
LAW FIRM

555 Montgomery Street, Suite 1210
San Francisco, CA 94111